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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. .....

ANTON RALPH RUDY ANTONELLI, IRWIN HERBERT RAMPT, MILTON SAPPERSTEIN, JACK BRANDT aka JACK LIMA,

Petitioners,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Petitioners, defendants and appellants below, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Court of Appeal of the State of California, Second Appellate District, Division Four, filed May [illegible], 1971, affirming the conviction of said petitioners on charges as hereinafter set forth (involving bookmaking and conspiracy to commit bookmaking).

OPINION BELOW

The opinion of the Court of Appeal of the State of California, Second Appellate District, Division Four, certified for nonpublication, was filed May 17, 1971. Petition for Hearing filed with the Supreme Court of California was denied without comment on July 14, 1971. A copy of the opinion filed by the Court of Appeal is annexed hereto as Appendix "A."

JURISDICTIONAL STATEMENT

The opinion of the Court of Appeal, certified for nonpublication, was entered on May 17, 1971. A Petition for Rehearing was timely filed with said Court of Appeal and denied. A timely Petition for Hearing was denied by the Supreme Court of California on July 14, 1971, without comment. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

Does the opinion of the Court of Appeal conflict with other decisions of California courts, and with decisions of the United States Supreme Court, in finding adverse to the following specified violations of petitioners' constitutional rights?

1. The search warrant* was based upon an affidavit that was insufficient under the Fourth and

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*There were two search warrants involved, No. 1788 and No. 1789, both of which were attacked on appeal as being insufficient. For the sake of brevity, reference in our argument is specifically to No. 1789. Additionally, the evidence seized under No. 1788 (from the residence of Brandy/Lima) had no meaning until allegedly correlated with evidence seized under Search Warrant No. 1789 (see page 8, *infra*).

Fourteenth Amendments to the United States Constitution.

2. The police failure to comply with Section 1531 of the California Penal Code rendered the evidence obtained from petitioners inadmissible.

3. The refusal of the officers to disclose the identities of the informants upon whose alleged information the search warrant was obtained required a dismissal of the action against petitioners.

Furthermore, the writ should be granted to settle important questions of law.

STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment IV

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

Amendment XIV

> ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

California Penal Code

§ 995—"The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases:

"If it be an indictment:

"1. Where it is not found, endorsed, and presented as prescribed in this code.

"2. That the defendant has been indicted without reasonable or probable cause.

"If it be an information:

"1. That before the filing thereof the defendant had not been legally committed by a magistrate.

"2. That the defendant had been committed without reasonable or probable cause."

§ 1531—"The officer may break open any outer or inner door or window of a house . . . to execute a warrant, if after notice of his authority and purpose he is refused admittance."

§ 1538.5—"(a) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on the ground that:

"(1) The search or seizure without a warrant was unreasonable; or

"(2) The search or seizure with a warrant was unreasonable because (i) the warrant is

insufficient on its face; (ii) the property or evidence obtained is not that described in the warrant; (iii) there was not probable cause for the issuance of the warrant; (iv) the method of execution of the warrant violated federal or state constitutional standards; or (v) there was any other violation of federal or state constitutional standards."

STATEMENT OF THE CASE

Following a preliminary hearing on April 30, 1969, an amended information was filed charging the respective petitioners with violations of the California Penal Code between May 19 and May 26, 1968, as follows:

Count I–all petitioners–violation of conspiracy to commit violation of Section 337a Penal Code (bookmaking);

Count II–all petitioners–violation of Penal Code Section 337a, Subdivision 1 (bookmaking);

Count III–Anton Kaleel–violation of Penal Code Section 337a, Subdivision 2 (keeping an apartment for the purpose of bookmaking);

Count IV–Rudy Antonelli and Milton Sapperstein–violation of Penal Code Section 337a, Subdivision 2 (keeping an apartment for the purpose of bookmaking);

Count V–Rudy Antonelli and Milton Sapperstein–violation of Penal Code Section 337a, Subdivision 2 (keeping an apartment for the purpose of bookmaking);

Count VI–Jack Lima, aka Brandy–violation of Penal Code Section 337a, Subdivision 2 (keeping an apartment for the purpose of bookmaking);

Count VII–all petitioners–violations of Penal Code Section 337a, Subdivision 4 (registering bets).

Motion to dismiss under Section 995 Penal Code and to suppress under Section 1538.5 Penal Code were denied.

At trial, a trial by jury was waived and the cause submitted on summaries of the evidence of the Preliminary Hearing, filed by the petitioners and the People respectively. The trial court found petitioners guilty on all counts as charged–except Count V, which was dismissed. Motions for new trial were denied.

Petitioners Kaleel, Antonelli, Hanft and Brandy were sentenced to state prison on the conspiracy count; execution of that sentence was suspended and they were granted probation. On the other counts, these petitioners were sentenced to state prison, with execution stayed in accordance with the formula of *People v. Niles,* (1964) 227 Cal.App.2d 749.[1] In the case of petitioner Sapperstein, proceedings were suspended and he was granted probation on the conspiracy count; no action was taken on the other counts.

All petitioners appealed from the several judgments and orders granting probation, contending on appeal, as here, the violation of their constitutional rights and, specifically the insufficiency of the affidavits upon which the search warrants were based. A copy of Search Warrant No. 1789 and of the affidavit in support thereof is attached hereto as Appendix "B."

STATEMENT OF THE EVIDENCE

Search warrants were obtained for the search of petitioner Brandy/Lima's house in San Gabriel, for Sapperstein's

1. Execution stayed during the pendency of appeal and thereafter during the period of probation as to the conspiracy count and during the service of any sentence imposed in respect to the conspiracy count, said stay to become permanent in the event judgment on the conspiracy count is affirmed and at the conclusion of the probation or any sentence imposed in connection with the conspiracy count.

apartment in Glendale and for the apartment of petitioner Kaleel, No. 202, located at 1155 North La Cienega in Los Angeles. The person of petitioner Hanft was also searched near a telephone booth in West Hollywood. All searches except that conducted at the residence of Brandy/Lima were pursuant to Search Warrant No. 1789, a copy of which and the affidavit in support thereof are attached as Appendix "B."

Officers McKitterick and Engler went to petitioner Kaleel's apartment and waited in the hallway for about thirty minutes. When petitioner Antonelli stepped out, McKitterick identified himself and showed a copy of the search warrant to Antonelli and also showed a copy to Kaleel, who was standing in the entry hall of the apartment. Without demand for entry by the officers or refusal by Kaleel, the officers entered without knocking and made an exhaustive search of Kaleel's apartment. They searched music record albums of a stereo and found what appeared to be top sheets. They allegedly then placed Antonelli and Kaleel under arrest. Officer McKitterick had telephone calls from Sgt. Safford, who was simultaneously searching Sapperstein's apartment in Glendale. On the third call, Safford said he had found bookmaking paraphernalia there and gave McKitterick some numbers. McKitterick compared the numbers with the top sheets found in the music record albums and only then formed the opinion that they were bookmaking paraphernalia and, because of the correlation, placed Kaleel and Antonelli under arrest. (This is, of course, contrary to the testimony that Antonelli and Kaleel were placed under arrest as soon as the officers found in the record albums what appeared to be top sheets. It was not until the third call of Safford [wherein Safford advised McKitterick that

he had found bookmaking paraphernalia] that McKitterick formed the opinion that Kaleel and Antonelli were guilty of bookmaking and then arrested them. Before the third call and receipt of Safford's information, McKitterick did not feel that he had enough evidence to place Antonelli and Kaleel under arrest.)

Sgt. Safford testified that at the Glendale apartment of petitioner Sapperstein he found yellow ledger sheets which in his opinion were top sheets, betting markers, and National Daily Reporters. According to his testimony the items were removed from a large wooden desk.

Petitioner Lima's house in San Gabriel was searched by Officer Daniel R. Sullivan. Officer Sullivan found pieces of paper with inked notations thereon. He had no opinion as to what these were until approximately an hour and forty-five minutes later when he received a telephone call from Sgt. Safford and compared the numbers. Before the call from Safford he did not feel that the pieces of paper were enough to form an opinion. (This evidence excluded as to others.)

Officer Daniel A. Danko searched the person of petitioner Hanft, finding in Hanft's pocket a piece of paper with two columns of numbers and removing from Hanft's sock a similarly marked piece of paper.

There was no testimony by any officer that any of the petitioners other than Antonelli were ever seen at Kaleel's apartment or that Kaleel was ever seen at any of the other places searched. There was no evidence of any specific agreement or understanding between the alleged conspirators, petitioners herein.

ARGUMENT

I

The Affidavit For The Issuance Of The Search Warrant Was Defective And Insufficient And, So, Rendered The Search Warrant To Be Illegally Issued, Causing The Searches To Be Illegal And The Evidence Obtained Inadmissible Against The Petitioners.

The affidavit here involved (see Appendix "B") fails to meet the requirements of this Court, notably *Aguilar v. Texas*, 378 U.S 108, and *Spinelli v. United States*, 393 U.S. 410, to establish that gambling and bookmaking paraphernalia described in the affidavit might be found at the various locations searched.

In *Aguilar* the affidavit upon which the search warrant was issued contained the statements that affiant received reliable information from a credible person and affiant believed that narcotics were being kept at defendant's premises. The Court held that there was a lack of supporting facts and circumstances alleged to establish probable cause for the search of defendant's premises and, hence, the evidence obtained was inadmissible. The Court further held that the standards of reasonableness under the Fourth and Fourteenth Amendments were the same (*Ker v. California*, 374 U.S. 23).

In *Spinelli*, the Court held that the affidavit for the search warrant failed to meet the two-pronged test of *Aguilar*, to wit: (1) the application for search warrant "failed to set forth the underlying circumstances necessary to enable the magistrate independently to judge the validity of the

informant's conclusion that the narcotics were where he said they were"; and (2) the officers "did not attempt to support their claim that their informant was 'credible' or his information was 'reliable'." The affidavit set forth certain movements of Spinelli, the place of his residence to which the telephones were registered, that Spinelli was known generally to officers as a bookmaker and gambler and associate of bookmakers and gamblers, and that the confidential reliable informant informed the affiant that Spinelli was operating a handbook and accepting wagers at the residence. The Court pointed out that it was not alleged that the informant personally observed Spinelli at work at the premises to be searched.

In *Nathanson v. United States,* 290 U.S. 41, the affidavit was held insufficient although it contained substantially the same allegations as in the instant case, namely, that "there is probable cause to believe and [affiant] does believe" that certain property or things used to commit a felony or to show that a felony has been committed are at a specific location.

The affidavit herein also fails to meet the requirements of decisions of California courts which followed the *Aguilar* rules and held the affidavits insufficient. *People v. Sesslin,* 68 Cal.2d 418 (arrest warrant); *People v. Scoma,* 71 Cal.2d 332; *People v. Hamilton,* 71 Cal.2d 176; *People v. Tillman,* 238 Cal.App.2d 134; *People v. Castro,* 249 Cal.App.2d 168; *Price v. Superior Court,* 1 Cal.3d 836.

In *People v. Hamilton,* the officer's affidavit stated that on July 13, 1967, he was informed by a confidential reliable informant that Nora Mae Hamilton had in her possession at 822 Alpine Street, Upland, 300 rolls of dangerous drugs.

The officer further stated that she had been previously arrested on April 14, 1967, at the location for possession of marijuana and dangerous drugs found there. The search warrant was issued the day following the information. The court held that the affidavit failed to meet the two-pronged test of *Aguilar* and that the detail as to the existence of contraband in the particular location was insufficient. The judgment of conviction arising from seizure of the heroin and dangerous drugs found under the search warrant was reversed.

In *People v. Scoma,* the order of the trial court setting aside the information because defendant was held to answer without reasonable cause was affirmed. The court held that the evidence seized under the search warrant was inadmissible because the affidavit was insufficient. One prong of *Aguilar* was established, namely, personal knowledge by the informant that the narcotics were at the location described. However, the affidavit was vulnerable under the second prong, the non-reliability of the informant—a boy of 16 years of age.

In *Price v. Superior Court,* the court granted prohibition and mandamus, directing the trial court to refrain from using evidence against the defendant obtained by a search warrant and to suppress the evidence. The defendant was charged with discharging a firearm at a vehicle, assaults with deadly weapon and attempted murder. The affidavit for a search warrant set forth that two officers had informed affiant officer of hearing explosions at 2:00 a.m. on October 23, in the 3200 block of Imperial Avenue; that a reliable informant had told affiant that he had "personal knowledge" that Price had in his possession on October 21 a rifle with a scope on it; that the informant had seen Price and one Brad-

shaw at 2:00 a.m. on October 23 in the 3200 block of Imperial Avenue; and that Price lived at 3327 "L" Street in San Diego and Bradshaw lived at 3290 Imperial Avenue. The court held the affidavit insufficient.

In *People v. Castro*, the affidavit was couched in almost identical language with the language of the affidavit in the instant case, to wit: "There is just, probable and reasonable cause to believe, and that [affiant] does believe that there is now in the possession of Edward Castro on the premises located and described as . . . ." The affidavit was held insufficient, although the arrest was upheld on further grounds establishing probable cause.

In *Skelton v. Superior Court* 1 Cal.3d 144, the California Supreme Court upheld the search warrant because it was not only supported by information gathered by Officer Geisler with respect to Skelton's receiving stolen property and keeping the same at his residence but, also, it was supported by the affidavit of Ronald Boyd, who had confessed to several burglaries and the delivery of the stolen goods to Skelton at the latter's residence. Boyd's affidavit also contained the statement that he had seen several of the stolen items in the home of Skelton. The court stated at page 152:

> "Boyd's affidavit in the instant case contains no hearsay report of an informant, identified or otherwise. Rather, the sworn statement of the 'informer' is embodied in the affidavit itself. Concededly, there is no corroboration of the crucial allegations in Boyd's affidavit provided by Officer Geisler. Were all the information contained in Boyd's affidavit incorporated as

[illegible] within Preiser's affidavit, the latter might well fall before the 'second prong' of *Aguilar*. But that is not the case."

In the instant case, the affidavit of Officer Danko (Appendix "B") is closely similar with the affidavit in *Spinelli v. United States*, *supra*, wherein the affidavit to obtain a search warrant for the search of Spinelli's place for bookmaking paraphernalia was held insufficient. A comparison of the affidavit in both cases will indicate the similarity.

Informant No. 1 mentioned in the affidavit was not a reliable informant and, even though he stated to the affiant that he had seen and observed all of the information supplied, its non-reliability precluded the issuance of a search warrant based on his information. *Spinelli v. United States*, *supra*. See also *People v. Hamilton*, *supra*; *People v. Sorrow*, *supra*.

Informant No. 2, whom affiant alleged to be reliable, stated only to Officer McLittrick—not to affiant (Officer Danko)—that Antonelli was supervising Kaleel's bookmaking operation and a hostess worked in the back office to assist the regular clerk; that Antonelli used the code name "Bill" and the back office clerk used the name "Tom" and a female known as Blanche Stein was working a front office and using the code name "Lee"; and that Blanche Stein had been arrested and had to answer. There was nothing in the affidavit to show the informant's source of information or how he arrived at his conclusions. No information was shown as to where the offices were located or when. As far as can be ascertained from the affidavit, the informant may have gotten his information from some other person not reliable or, as in

Spinelli and *Hamilton*, the information might have been based solely on rumor. The information set forth, then, fails to meet the standards of the above-cited cases.

Informant No. 3: The same criticism aforesaid applies to the information allegedly furnished by Informant No. 3, who was alleged to be reliable. The reliability of said informant was based upon three prior arrests made on information furnished by him. The arrestees had not been convicted but were merely awaiting trial, so there is a substantial doubt as to the informant's reliability.

Additionally, the information supplied by the informants was "stale."

The information given by Informant No. 1, who allegedly had "personally seen and observed all the information he had supplied" to affiant, related to a period in February 1967. Allegedly, he "reaffirmed the information" in October 1967, which he had previously given. It is unclear whether the affidavit meant only that the informant restated in October his previous information or whether he indicated that bookmaking activities were going on in October 1967. In either event, the information was "stale," because the affidavit was made and the search warrant obtained on May 25, 1968, either 15 months or 7 months after the information was obtained, and did not indicate the presence of the items *at the time of the issuance of the search warrant.*

With respect to Informant No. 2, the same defect as to "staleness" of the information is apparent. The information received from Officer McKitterick, who received it from Informant No. 2, pertained to the month of December 1967, six months before the date of the affidavit. Affiant Danko

also indulged in conclusions when he stated that on May 20, 1968, "Informant No. 2 reaffirmed a portion of the information he had previously given Officer McKitterick." To whom did he reaffirm? Was it to McKitterick or Danko? If to McKitterick, then the affidavit of McKitterick should have been obtained; otherwise, as in the case of information pertaining to December 1967, it was hearsay upon hearsay.

The information obtained from Informant No. 3 also pertained to December 1967 and, so, was stale. Further, affiant Danko stated that as late as April 15, 1968, Informant No. 3 "reaffirmed the information" given to Officer McKitterick in December 1967. This is not only a conclusion but, in the absence of an affidavit by McKitterick, is again hearsay upon hearsay.

The leading case on this subject is *Sgro v. United States,* 287 U.S. 206. A search warrant was issued to search certain premises but was not served within the 10-day period, so a second search warrant was obtained on the identical facts as set forth to obtain the first warrant. The Court held the affidavit insufficient and the search warrant illegally issued. The Court stated at page 211:

> "The statute in terms requires him [Commissioner] before issuing the warrant to take proof of probable cause . . . The proof supplied must have appropriate relation to the application for the new warrant and *must speak as of the time of the issue of the new warrant* . . . The new warrant must rest upon a proper finding and statement by the Commissioner that probable cause *then exists.* The determination, as of that time, cannot be left to mere inferences or conjecture." (Emphasis

added.)

In *Schoeneman v. United States*, 317 F.2d 173, the court, in ordering the suppression of the search warrant issued some time after the affidavit upon which it was based, stated at page 177:

> "To support a search warrant the proof supplied must speak as of the time of the issue of [the] warrant. The Commissioner has not authority to rely on affidavits which have sole relation to a different time and have not been brought down to date or supplemented so that they can be deemed to disclose grounds existing when the warrant is issued. If the Commissioners are to serve a useful function in protecting citizens against arbitrary searches, *probable cause must be determined as of the time the warrant is issued* and not with the benefit of hindsight." (Emphasis added.)

In the recent case of *Durham v. United States*, 403 F.2d 190, the Ninth Circuit Court of Appeals, citing *Sgro v. United States, supra*, ordered the suppression of the search warrant because of the time lapse. At page 193 the court stated:

> "The facts submitted to the Commissioner must be sufficient to justify a conclusion by him that property which is the subject of the search is probably on the person or premises to be searched at the time the warrant is issued. The most convincing proof that the property was in the possession of the person or upon the premises at some remote time in the past will not justify a present invasion of privacy."

In California cases the same ruling has been applied,

and there must be a showing of activity close to the time the warrant is issued. For example, in *Cave v. Superior Court*, 267 Cal.App.2d 517, the delay of 7 days in serving the search warrant was held to be too long. In *People v. Nelson*, 171 Cal.App.2d 360, the court held that 20 days was not too long, but the decision was based upon the statement in the present tense used in the affidavit that "marijuana is being smoked" on the premises, indicating evidence of the continuation of the activity first observed 20 days earlier. In *People v. Casey*, 250 Cal.App.2d 669, there was a lapse of 30 days when the officers first had cause to believe that contraband was present and was being dealt in at the premises described in the search warrant; however, there were events occurring within 3 or 4 days of the issuance of the search warrant indicating present activity therein. In *People v. Sheridan*, 2 Cal.App.3d 483, the marijuana was seen on the premises within 9 days prior to the issuance of the search warrant. In *People v. Scott*, 259 Cal.App.2d 268, the circumstances occurred which indicated the presence of the items 4 days before the issuance of the search warrant.

In the light of the discussions and rules in the above cases, it is obvious that the search warrant in this case was based upon information obtained months prior to the issuance of the warrant. It was therefore too stale to be used.

The affidavit clearly failed to show the presence of any bookmaking paraphernalia in the apartment of Kaleel at any time and certainly not at or about the date of the affidavit. The informants stated or indicated that Kaleel was conducting "a back office," but the location thereof was never

indicated to be apartment No. 202, 1155 North La Cienega Boulevard, Los Angeles, California, the address being that of a multi-unit apartment house. The only mention of Kaleel's apartment was that Antonelli was seen going there. Hence, one of the prongs of *Aguilar v. Texas, supra,* was absent, namely, the presence of bookmaking paraphernalia, etc. in Kaleel's apartment. The mere fact that Antonelli was seen going there was insufficient to justify the determination that bookmaking paraphernalia was present therein, as the Court in *Spinelli v. United States, supra,* so ruled. Not one of the informants stated that he had seen any gambling or bookmaking activities in Kaleel's apartment or that any of the telephone numbers used in any bookmaking operations ever were registered to Kaleel at his apartment. Furthermore, in the affidavit there was no mention that any of the telephone numbers were registered to Kaleel's apartment. If that had been the situation, Officer Danko would certainly have so stated. His failure to do so clearly establishes that no telephone numbers referred to by informants and by Danko were registered to Kaleel's apartment.

Concluding this point, we submit that the affidavit of Officer Danko was clearly insufficient to support a search of Kaleel's apartment, the apartment of Sapperstein, the person of Hanft, or any one of them. This being so, the search warrant was illegal and the evidence obtained was inadmissible–being "fruit of the poisonous tree." (*Wong Sun v. United States,* 371 U.S. 471; *People v. Haven,* 59 Cal.2d 713; *People v. Superior Court of Shasta County,* 71 Cal.2d 265)

From the testimony of the officers, the evidence

found in Kaleel's apartment was insufficient in and of itself; the pieces of paper with ink notations seized at the home of Brandy/Lima under Search Warrant No. 1788 were not sufficient for the officer to form any opinion until allegedly correlated with evidence seized under Search Warrant No. 1789.

II

The Failure Of The Police To Comply With Penal Code Section 1531 Rendered The Entry And Search Of Petitioner Kaleel's Apartment Illegal.

An examination of the testimony of Officer McKitterick indicates that there was a failure to comply with Section 1531 of the Penal Code in the entry into Kaleel's apartment at 1155 North La Cienega, Los Angeles.

As previously set forth, Section 1531 of the Penal Code provides that the officer may break open any outer or inner door or window of a house to execute a warrant, "*if after notice of his authority and purpose he is refused admittance*" (emphasis added). Section 844 of the Penal Code contains similar provisions where the officer has no warrant.

The failure of the police to comply with Section 1531 or the companion section has been held by California and federal courts to render the entry and subsequent search illegal, some of the most recent and important cases being: *People v. Gastelo*, 69 Cal.2d 586; *People v. Rosales*, 68 Cal.2d 299; *People v. DeSantiago*, 71 A.C. 18; *People v. Hamilton*, *supra*; *Greven v. Superior Court*, 71 A.C. 303, 78 Cal.Rptr. 504; *Sabbath v. United States*, 391 U.S. 585, 589.

In *Sabbath v. United States*, *supra*, one Jones was appre-

hended crossing the border from Mexico with cocaine allegedly given to him by and to be delivered to "Johnny" at an apartment in Los Angeles. Jones went to the apartment equipped with a transmitting device, while the agents waited outside the building with a receiving apparatus. Jones knocked, and a woman answered. Jones asked if "Johnny" was there; he was told to wait a minute; and, shortly, a male voice was heard. After about five to ten minues the agents knocked and, receiving no response, opened the unlocked door and walked in. They saw petitioner on the couch withdrawing his hand from under the cushion. The agents searched and found cocaine under the cushion and other contraband in the house. Motions to suppress were denied. The United States Court of Appeals for the Ninth Circuit affirmed the conviction, holding that opening an unlocked door did not constitute a breaking open; but this Court reversed, citing and agreeing with *People v. Rosales, supra,* that an unannounced intrusion is breaking in even though the door be unlocked.

In the instant case, Officer McKitterick and his fellow officer saw Kaleel in the entryway of the apartment and barged in without giving notice of their authority and/or their purpose. Only after they had entered did they announce that they were police officers.

In light of the above cases, we submit that there was a failure to comply with Penal Code Section 1531 and, hence, the entry and search were illegal.

III

The Evidence Was Insufficient To Establish A Conspiracy Between Petitioners.

The evidence was insufficient on any or all of the following theories:

First, the evidence seized by the search warrant based upon an insufficient affidavit was inadmissible, and if it is denied admission, there is left no competent evidence to support the conviction.

Second, the evidence was obtained in violation of Section 1531 Penal Code and, hence, inadmissible, leaving no competent evidence to support the conviction.

Third, the evidence–independent of the above theories–was in fact insufficient to establish a conspiracy between the various petitioners. In order to constitute a conspiracy there must be an agreement between two or more persons to commit an offense and an overt act in furtherance of the agreement. There must be evidence of some specific agreement or understanding between the alleged conspirators. Mere association between individuals, without proof of the corrupt agreement between them, is insufficient to prove a conspiracy (*Simonds v. Superior Court,* 245 Cal.App.2d 704; *Lavine v. Superior Court,* 238 Cal.App.2d 540; *People v. Mata,* 133 Cal. App.2d 18).

In one of the leading California cases on conspiracy, *People v. Samarjian,* 240 Cal.App.2d 13, the conviction of the defendants for conspiracy was reversed, although their conviction on the substantive counts of forgery was affirmed. The court stated at page 17:

> "Insofar as [the conspiracy count] of the information is concerned, we think that defendant's contention that the evidence was insufficient was well taken. The gist of a criminal conspiracy is an agreement, express or implied, to commit any crime or to do one or more of the acts specified in

> section 182 of the Penal Code. But, while many acts which further an illegal purpose may suffice to make a person an accessory before the fact at common law, and therefore a statutory principal in California, the mere aiding and abetting is not enough to create liability for the crime of conspiracy. While it is true that the existence of the requisite agreement may be proved indirectly or by circumstantial evidence, still the ultimate fact to be proved is the actual existence of an agreement."

Citing *United States v. Falcone,* 311 U.S. 205, 210; *Davidson v. United States,* 61 F.2d 250; *United States v. Peoni,* 100 F.2d 401.

In the instant case the evidence falls far short of establishing an agreement. Mere association and acquaintanceship between the petitioners did not establish a conspiracy. The information from the informants was inadmissible to establish a conspiracy. The only evidence whatsoever was the dubious alleged correlation of certain figures on papers found in the apartments of Kaleel and Sapperstein–those found in Brandy/Lima's home being excluded as to the other petitioners. The correlation was sketchy and incomplete. The testimony of Safford on cross-examination rebuts the conclusions testified on direct examination that there was correlation of figures on sheets found at Kaleel's apartment and at Sapperstein's apartment.

The lack of any substantial correlation negates the establishment of a conspiracy and demonstrates the insufficiency of the evidence to support the conviction of conspiracy.

It is to be noted that no one heard any of the petitioners

actually accepting or making a wager, with the possible exception of Hanft. Officer Danko testified that he observed Hanft enter a phone booth; that Hanft answered the phone and said, "Bill, why don't you give me the stuff"; and that he observed Hanft writing numbers on a piece of paper. This conversation was susceptible of the interpretation that Hanft was doing the betting and was not engaged in bookmaking. Certainly, such conversation did not involve the other petitioners.

IV

The Refusal Of The Officers To Disclose The Identities Of The Respective Informants Upon Whose Information The Affidavit For The Search Warrant Was Based Rendered The Evidence Inadmissible And Required The Dismissal Of The Case.

Under Sections 1041 and 1042 of the California Evidence Code the police may refuse to disclose the identity of the informant, but such refusal requires a dismissal where the disclosure of the informant may be helpful to the defendant's case.

In this area the California cases have followed the general principle put forth in the case of *Roviaro v. United States*, 353 U.S. 53, 61. It is there stated:

> "Most of the federal cases involving this limitation on the scope of the informer's privilege have arisen where the legality of a search without a warrant is in issue and the communications of an informer are claimed to establish probable cause. In these cases the Government has been required to dis-

> close the identity of the informant unless there was sufficient evidence apart from his confidential communication."

See also *Scher v. United States*, 305 U.S. 251; *United States v. Blich* 45 F.2d 627; *United States v. Keown*, 19 F.Supp. 636.

The disclosure of the identity of the informants was clearly necessary for the defense, especially on the issue of the absence of any bookmaking activities being carried on at the apartment of Kaleel and the absence of any information concerning the presence of bookmaking paraphernalia in his apartment. Except for the statements made by Informant No. 1 to affiant Danko used to obtain the search warrant, and except for the alleged statements of the other two informants to Officer McKitterick, who relayed them to Danko (hearsay upon hearsay), there was no evidence to tie Kaleel into any bookmaking activities. The evidence against Kaleel consisted only of the so-called top sheets found in the record album in his apartment, and the correlation of these with owe sheets found in Sapperstein's apartment in Glendale was highly dubious, strained and circumspect. The same can be said of the correlation of the pieces of paper with ink notations found in the home of Brandy/Lima. Undoubtedly, the trial court was influenced by the hearsay statements and conclusions set forth in the affidavits. Thus, the disclosure of the informants' identities was essential to rebut the charges.

CONCLUSION

In conclusion, we contend that the decision of the Court of Appeal, and the affirmation thereof by the Supreme

Court of California was in direct conflict with the cases above set forth. We respectfully urge this Court to grant the writ requested writ in order to resolve the conflict and to settle important questions involving the violation of petitioners constitutional rights.

Respectfully submitted,

RUSSELL E. PARSONS

Attorney for Petitioners

Of Counsel:

Earl C. Broady, Jr.
Paul Caruso
Max Solomon

OPINION - FILED MAY 17, 1971

(Certified for nonpublication)

In the Court of Appeal of the State of California, Second Appellate District, Division Four.

THE PEOPLE, Plaintiff and Respondent, vs. ANTON KALEEL, et al., Defendants and Appellants.

Crim. No. 18314.

Superior Ct. No. A-233-460.

APPEALS from judgments (including orders granting probation) of the Superior Court, Los Angeles County. Norman R. Dowds, Judge. Affirmed.

Max Solomon and Russell E. Parsons, for Defendants and Appellants, Kaleel, Antonelli, Hanft and Sapperstein.

Paul Caruso, for Defendant Brandy.

Evelle J. Younger, Attorney General, William E. James, Assistant Attorney General, and Edwart T. Fogel, Deputy Attorney General, for Plaintiff and Respondent.

Anton Kaleel, Rudy Antonelli, Irwin Hanft, Milton Sapperstein and Jack Brandy (also known as Jack Lima) appeal from various judgments of convictions for bookmaking offenses after a trial by the court which was submitted as a short cause matter on the basis of summaries presented by defendants and the People. All five defendants were convicted of conspiracy (Pen. Code, § 182, subd. (1)) to violate Penal Code section 337a (bookmaking), of a substantive violation of Penal Code section 337a (bookmaking), and of violating Penal Code section 337a, subdivision (4) (registering bets).[1] In addition, defendants Kaleel

1. "Every person, . . .

(continued)

Sapperstein, Antonelli and Brandy were found guilty of violating section 337a, subdivision (2) (keeping an apartment for the purpose of bookmaking).[2]

Defendants Kaleel, Antonelli, Hanft and Brandy were sentenced to state prison on the conspiracy count; execution of that sentence was suspended and they were granted probation. On the other counts against these defendants, they were sentenced to state prison, with execution stayed in accordance with the formula of *People v. Niles*, (1964) 227 Cal.App.2d 749. In the case of defendant Sapperstein, proceedings were suspended and he was granted probation on the conspiracy count; no action was taken on the other counts.

All defendants have appealed from the several judgments and orders granting probation; we affirm.

On May 26, 1968, Officers Sullivan, Danko, Safford, and McKitterick conducted coordinated searches at four locations: 529 Glenwood, Apartment 4, in Glendale; 1155 North La Cienega, Apartment 202, in Los Angeles; 721 North

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1. (cont'd)
"4. Who, whether for gain, hire, reward, or gratuitously, or otherwise, at any time or place, records, or registers any bet or bets, wager or wagers, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of man or beast, or between men, beasts, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever; . . . is punishable . . . ."

2. "2. Who, whether for gain, hire, reward, or gratuitously, or otherwise, keeps or occupies, for any period of time whatsoever, any room, shed, tenement, tent, booth, building, float, vessel, place, stand or enclosure, of any kind, or any part thereof, with a book or books, paper or papers, apparatus, device or paraphernalia, for the purpose of recording or registering any bet or bets, or any purported bet or bets, or wager or wagers, or any purported wager or wagers, or of selling pools, or purported pools, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of man or beast, or between men, beasts, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever; . . . is punishable by imprisonment in the county jail for a period of not more than one year or in the state prison for a period not exceeding two years."

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California Street in San Gabriel; and 848 North Kings Road in Los Angeles. The person of defendant Hanft was also searched near a telephone booth in West Hollywood. All of these searches were pursuant to Search Warrants (Nos. 1788 and 1789), more particularly described below, which authorized searches of both the premises involved and the persons of the defendants. The searches produced extensive evidence of bookmaking activities which, along with the testimony of the officers who had been investigating defendants over an extended period of time formed the basis for defendants' convictions of both the substantive and conspiracy charges. A more detailed statement of evidence will be set forth in connection with each of appellants' charges of error.

I

Defendant Brandy argues that evidence obtained as a result of the search of his residence at 721 North California should have been suppressed because the search warrant was insufficient, in that the affidavit, as a matter of law, did not support its issuance. Defendant urges insufficiency in the reliability of the informers and a failure to show the underlying facts on which the informers based their knowledge.

The requirements governing the issuance of search warrants by a magistrate have been clearly and fully set forth by both state and federal courts. (*Aguilar v. Texas*, (1964) 378 U.S. 108, 114; *United States v. Ventresca*, (1965) 380 U.S. 102, 109; *Skelton v. Superior Court*, (1969) 1 Cal.3d 144, 150-155; *People v. Scoma*, (1969) 71 Cal.2d 332, 337-338; *People v. Benjamin*, (1969) 71 Cal.2d 296, 301; *People v. Hamilton*, (1969) 71 Cal.2d

176, 179-180.) In summary, these requirements are: that there must be a "substantial basis," supported by factual, rather than conclusionary, allegations from which the magistrate can conclude the presence of contraband; and that the affidavit in support of the warrant must itself contain such competent factual statements, including information from which it can be concluded that information obtained from an informer is reliable and personal. In addition, the sufficiency of the affidavit is to be judged in light of the policy of the law to encourage rather than to discourage the issuance of warrants by an impartial magistrate rather than to encourage searches without warrants by zealous police officers. To this latter end, the affidavit should be judged in light of all the circumstances and in a commonsense rather than hypertechnical manner. An appellate court will not overturn the determinations of the trier of fact without a showing of clear abuse. (*Skelton v. Superior Court, supra,* (1969) 1 Cal. 3d 144, at 150; *People v. Benjamin, supra,* (1969) 71 Cal.2d at p. 301.)

In applying these principles to Warrant No. 1788, the affidavit was sufficient to support its issuance. An anonymous informant provided detailed information on the operation of a "bookmaking" organization. The information contained extensive and detailed information, including names, locations, license plate numbers and phone numbers. An independent check by Los Angeles police officers verified license plates, phone numbers, and that several of the named suspects had been previously arrested for bookmaking. (*Krauss v. Superior Court,* (1970) 9 Cal.App.3d 793, 798; *Arata v. Superior Court,* (1957) 153 Cal.App.2d 767, 775.) This informant had also previously given information leading

to at least ten bookmaking arrests.

A second informant was also shown to be reliable. This informant personally had placed bets with Brandy. This informant also supplied detailed and extensive information concerning defendants' bookmaking activity, including dates, names and telephone numbers. Other information supplied by this informant was also subjected to independent investigation and found to be reliable.

A third reliable informant also supplied Officer Sullivan, the affiant, with information which was independently found to be reliable.

Under the standards for the issuance of search warrants in light of the extensive and detailed information supplied by the informants and independently obtained by police officials, it must be held that the magistrate had more than ample cause to issue Warrant No. 1788. To hold otherwise would thwart both the law and the laudable purposes of the standards for their issuance.

II

Defendants Kaleel, Antonelli, Hanft and Sapperstein challenge the issuance of Search Warrant No. 1789 on essentially the same grounds as defendant Brandy challenged Warrant No. 1788. It would unduly prolong this opinion to repeat both the law and the many and detailed facts presented to the magistrate by the affiant, in this case Officer Danko. We have, however, carefully reviewed the affidavit presented to the magistrate. Again, several informers provided copious and detailed information which clearly showed personal knowledge of the facts related. And again their statements were investigated and corroborated by independent investigation and personal observation of both the affiant and

other police officials.

On the basis of the affidavit of Officer Danko, the magistrate was more than justified in issuing the warrant. To have required more would make a sham of the desirable practice of obtaining search warrants in protection of Fourth Amendment rights.

III

Defendants next contend that the evidence obtained from Kaleel's and Sapperstein's apartments was inadmissible because the officers failed to comply with the requirements of Penal Code section 1531[3] upon entering. This contention is also without merit. By its terms, Penal Code section 1531 applies when, "after notice of his authority and purpose, he is refused admittance." The door to Kaleel's apartment was open and Officer McKitterick identified himself and stated his purpose both to Antonelli, who was outside the apartment, and to appellant Kaleel, who was in the doorway. There was no evidence that the officer was refused admittance.

The entry to appellant Sapperstein's apartment likewise substantially complied with section 1531. Defendant was informed of the search warrant when stopped near the Golden State Freeway and requested to return to his apartment in Glendale. Defendant Sapperstein did not protest returning to his apartment. And, although he denied having a key to his apartment, there is no evidence that he protested when the officers obtained the key to his apartment and thereafter entered.

Under such circumstances, it cannot be held that there

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3. "The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance."

was not substantial compliance with section 1531. The entries were therefore valid. (*Greven v. Superior Court*, (1969) 71 Cal.2d 287, 292-293; *Beckers v. Superior Court*, (1970) 9 Cal.App.3d 953, 960.) Further, our Supreme Court has made clear that a primary purpose of section 1531 and its companion section 844, is to prevent violent confrontations between dwelling occupants and possible intruders. (*Duke v. Superior Court*, (1969) 1 Cal.3d 314, 321; *Greven v. Superior Court, supra*, at pp. 292, 293.) Since the defendants were outside their residence and were fully informed of the purpose of the police, as well as the existence of the warrant, no such danger can reasonably be assumed in this case.

The entries in both cases were, therefore, in substantial and lawful compliance with section 1531.

IV

Defendants next contend that the evidence was insufficient to sustain their convictions because: (a) the warrants were faulty; (b) the officers failed to comply with Penal Code section 1531; and (c) the substantive evidence was insufficient to sustain defendants' convictions. We have rejected arguments (a) and (b), above, and they need not be further discussed.

As to contention (c), we note, once again, that it is not the function of this court to reweigh the evidence before the trial court. (*People v. Redmond*, (1969) 71 Cal.2d 745; *People v. Newland*, (1940) 15 Cal.2d 678.) In addition, a total review of the findings of the trial court is, in this case, unwarranted—that review, which is clearly sustained by proper citations in the People's brief, consists of over 20 pages.

We do note, however, some salient facts which support the position of the trial court as to all of the counts against defendants: First, Officer Safford, who was qualified as an expert in bookmaking, identified and described the evidence and significance of much of the evidence against defendants, including "owe" sheets and betting markers found at the various locations. Second, Officer Danko recovered from defendant Hanft an "owe" sheet which correlated with information found at the residence of Kaleel and at the Glendale address. Third, "top" sheets at Kaleel's apartment were also found to correlate with evidence obtained from defendant Hanft and from the Glendale address. Fourth, handwriting experts connected several defendants with the bookmaking notations. Fifth, the defendants convicted of occupying a place where bookmaking was taking place (Kaleel, Brandy, Sapperstein and Antonelli) at no time suggested that they were not in fact the occupants of and in control of the premises involved, and there was sufficient evidence of bookmaking found in these residences. Sixth, the evidence concerning registering and recording bets consisted of extensive exhibits of "owe" and "top" sheets, betting markers, numerous sports journals, expert testimony and handwriting analyses. (*Cf. People v. Miller*, (1962) 205 Cal.App.2d 116, 121; *People v. Buckman*, (1960) 186 Cal.App.2d 38, 49; *People v. Cohen*, (1951) 107 Cal.App.2d 334, 341; *People v. Jackson*, (1957) 152 Cal.App.2d 397, 401; *People v. Fontes*, (1970) 7 Cal. App.3d 650, 652; *People v. Goldstein*, (1956) 139 Cal.App. 2d 146, 155; *People v. Lindsey*, (1951) 105 Cal.App.2d 463, 464.)

Further, as to the conspiracy conviction, it was not necessary for the People to prove an actual meeting and

detailed plan. Conspiracy may be shown by circumstantial evidence. (*People v. Steccone*, (1950) 36 Cal.2d 234, 238; *People v. Buckman, supra* (1960) 186 Cal.App.2d 38, at 47.) Such a conspiracy could here be shown by the various handwriting exemplars, correlation of figures, seeing various of the defendants together and expert testimony.

V

Finally, defendants contend that they were entitled to disclosure of the identities of the informants who provided some of the basis for the issuance of Search Warrants 1788 and 1789 (discussed above), and that failure of disclosure rendered the evidence obtained from the searches pursuant to those Warrants inadmissible.

This argument is refuted by defendants' own arguments. Both in their briefs and in argument before the trial court, defendants relied on *Honore v. Superior Court*, (1969) 70 Cal.2d 162, 168. That case states:

> "Defendants need not prove that the informer could give testimony favorable to them in order to compel disclosure of his identity nor need they show that he was a participant in or an eyewitness to the crime. [Citation.] Their burden extends only to *a showing that in view of the evidence, the informer would be a material witness on the issue of guilt* and nondisclosure of his identity would deprive the defendant of a fair trial.' " (Emphasis supplied.)

In the case at bench, the convictions rested on the evidence secured by the officers and their testimony and that of expert witnesses. The informants served only to provide the data necessary to institute the investigation and searches; they were not "material witnesses on the issue of guilt" and

did not fall within the rules requiring disclosure.

The judgments and orders are affirmed.

CERTIFIED FOR NONPUBLICATION

KINGSLEY, J.

We concur:

FILES, P. J.

JEFFERSON, J.

APPENDIX "B"

Search Warrant No. [redacted] and affidavit in support thereof.

APPENDIX "B"

SEARCH WARRANT NO. 1789

In the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California.

County of Los Angeles

The People of the State of California to any sheriff, constable, marshal, policeman, or any other peace officer in the County of Los Angeles:

Proof, by affidavit, having been this day made before me by D. A. Danko, No. 6996, LAPD, Administrative Vice, that there is probable and reasonable cause for the issuance of the search warrant, as set forth in the affidavit attached hereto and made a part hereof as if fully set forth herein; you are, therefore, commanded to make immediate search (at any time of the day or night, good cause being shown therefor) of the premises located and described as 529 Glenwood, Glendale, Apt. No. 4, one apartment on the 2nd floor, a two-story stucco multi-unit apartment building; 1155 N. La Cienega Boulevard, Apt. No. 202, one apartment, 2nd floor, multi-unit, 13-story concrete apartment building; 6431 W. 6th Street, first floor unit of a two-story stucco duplex building; 848 N. Kings Road, Apt. 109, Los Angeles County, a three-story multi-unit apartment building; and 16107 S. Van Ness Avenue, Gardena, a single-story structure, white stucco building; and the person(s) of Rudy Joseph Antonelli, male Caucasian, black hair, brown eyes, 5'11", 180 lbs., 41 yrs. of age; Milton Sapperstein, male Caucasian, brown hair, brown eyes, 5'8", 160 lbs., 47 yrs.

of age; Joseph Antone Kaleel, male Caucasian, grey hair, brown eyes, 5'10", 180 lbs., 55 yrs. of age; Harold "Happy" Meltzer, male Caucasian, brown hair, brown eyes, 5'7", 180 lbs., 60 yrs. of age; and Irwin Herbert Hanft, male Caucasian, brown hair, blue eyes, 5'11", 185 lbs., 39 yrs. of age; and the vehicle(s) described as a 1965 white/blue Rambler station wagon, license No. RHD 070; a 1968 black/bronze Cadillac, coupe, license No. WPT 814; and a 1965 black Mustang, coupe, license No. RFG 398, for the following personal property, to wit: Bookmaking paraphernalia, such as, but not limited to, owe sheets, top sheets, betting markers, professional markers, copies of sports journals, recording tapes, address books, telephones, baseball schedules, adding machines, ledger books, and any and all other material used in bookmaking, and if you find the same or any part thereof, to bring it forthwith before me at the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California, or to any other court in which the offense in respect to which the property or things taken is triable, or retain such property in your custody, subject to the order of this court pursuant to Section 1536 of the Penal Code.

Given under my hand and dated this 25th day of May, 1968.

PAUL ROEST

Judge of the Municipal Court

AFFIDAVIT IN SUPPORT OF AND PETITION FOR SEARCH WARRANT

State of California)
)
County of Los Angeles)

Personally appeared before me this 25th day of May, 1968, the affiant, D. A. Danko, No. 6996, LAPD, Administrative Vice, a peace officer, who, on oath, makes complaint, and deposes and says that he has and there is probable and reasonable cause to believe, and that he does believe, that there is now on the premises located at and also described as 529 Glenwood, Glendale, Apt. No. 4, one apartment on the 2nd floor, a two-story stucco multi-unit apartment building; 1155 N. La Cienega Boulevard, Apt. No. 202, one apartment, 2nd floor, multi-unit, 13-story concrete apartment building; 6431 W. 6th Street, first floor unit of a two-story stucco duplex building; 848 N. Kings Road, Apt. 109, Los Angeles County, a three-story multi-unit apartment building; and 16107 S. Van Ness Avenue, Gardena, a single-story structure, white stucco building, and on the person(s) of Rudy Joseph Antonelli, male Caucasian, black hair, brown eyes, 5'11", 180 lbs., 41 yrs. of age; Milton Sapperstein, male Caucasian, brown hair, brown eyes, 5'8", 160 lbs., 47 yrs. of age; Joseph Antone Kaleel, male Caucasian, grey hair, brown eyes, 5'10", 180 lbs., 55 yrs. of age; Harold "Happy" Meltzer, male Caucasian, brown hair, brown eyes, 5'7", 180 lbs., 60 yrs. of age; and Irwin Herbert Hanft, male Caucasian, brown hair, blue eyes, 5'11", 185 lbs., 39 yrs. of age; and the vehicle(s) described as a 1965 white/blue Rambler station wagon, license No. RHD 070; a 1968

black/bronze Cadillac, coupe, license No. WPT 814; and a 1965 black Mustang, coupe, license No. RFG 398; for the following personal property, to wit: Bookmaking paraphernalia, such as, but not limited to, owe sheets, top sheets, betting markers, professional markers, copies of sports journals, recording tapes, address books, telephones, baseball schedules, adding machines, ledger books, and any and all other material used in bookmaking.

Your affiant says that there is probable and reasonable cause to believe and that he does believe that the said property constitutes: (CHECK THE APPROPRIATE BOX, OR BOXES)

( )–stolen or embezzled property;

(x)– property or things used as the means of committing a felony;

(x)–property or things in the possession of a person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered;

(x)–property or things which consist of an item or constitutes evidence which tends to show that a felony has been committed, or tends to show that a particular person has committed a felony.

Your affiant says that the facts in support of the issuance of the search warrant are as follows:

Your affiant has been a police officer for the past 16 years, employed in such capacity by the Los Angeles Police Department, and has acted and received the information set forth in this affidavit in that capacity.

Your affiant is now and has been for the past four years

assigned to the Vice and Bookmaking Detail thereof.

In the latter part of February, 1967, your affiant arrested an individual for Bookmaking, in violation of Section 337a, P.C. This individual is hereinafter referred to as Informant No. 1. At the time of Informant No. 1's arrest and subsequently, said informant supplied affiant with the following information on various bookmakers operating in Los Angeles County: Informant No. 1 told affiant that a "Happy" Meltzer was involved in bookmaking activities with an Antone Kaleel. "Happy" Meltzer was referring customers to Kaleel and guaranteeing their bets. Meltzer was loaning money to the bettors to pay all their gambling debts whenever they were in arrears. Informant No. 1 also stated that the person who worked the back office for Antone Kaleel was called "Bill" and was from Massachusetts. A back office is a place where permanent records are kept of wagers placed by bettors. Also totals of monies to be collected from or paid to bettors are kept there.

From this period through and including the month of October, 1967, Informant No. 1 reaffirmed the information he had given previously. He further stated that two male Caucasians worked the back office for Antone Kaleel. One individual, named "Bill", was an Italian with straight black hair, 5'11" tall, 185 pounds, lived in the San Fernando Valley, had two children, and spoke with a Boston accent. He indicated that this individual was the supervisor of the back office. The informant indicated "Bill" would go to the back office on Sunday and figure the amounts of monies to be paid and collected from wagers which were placed with the organization. The informant then

indicated that each Sunday evening "Bill" would take these figures to Antone Kaleel's apartment because Antone Kaleel was the boss of the operation.

Informant No. 1 stated that another clerk worked the back office every day and he was also from "back East". This informant told affiant that your affiant "just missed the back office when it was at 4176 Arch Drive in Studio City." He further stated that a Walter Palaski was a "trouble-shooter" for Antone Kaleel and did a lot of leg work for Antone.

Informant No. 1 told your affiant that he had personally seen and observed all of the information which he had supplied to your affiant. Affiant has personally observed Informant No. 1 in the company of Antone Kaleel at the location of 1155 North La Cienega Boulevard, County of Los Angeles.

Affiant has been informed by a fellow officer of the Los Angeles Police Department, Administrative Vice Detail, Officer L. D. McKitterick, of the following facts: That in the month of December, 1967, a person known to informant (hereinafter referred to as Informant No. 2) as Rudy Antonelli was supervising Antone Kaleel's bookmaking operation and, as needed, worked the back office to assist the regular clerk. Further, he informed Officer McKitterick Antonelli used the code name of "Bill"; the regular back office clerk used the name "Tom", and that a female, known as Blanche Stein, was working a front and using the code name of "Lee". Informant No. 2 has previously given Officer McKitterick information leading to the arrest of four individuals for violations of Section 337a, Penal Code (Bookmaking). These arrests have resulted in the convic-

tions of two of these individuals for Bookmaking. The other two individuals have been held to answer at preliminary hearing and their cases are pending trial in the Superior Court, for the County of Los Angeles. As recently as May 20, 1968, Informant No. 2 reaffirmed a portion of the information he had previously given Officer McKitterick. Informant No. 2 stated that "Bill" and "Tom" were still working the same back office. However, the female, known as Blanche, had been arrested. Affiant has been informed by Officer McKitterick that Officer McKitterick had arrested Blanche Stein for bookmaking activities.

Affiant was also informed that Officer McKitterick had been informed by another informant (hereinafter referred to as Informant No. 3) of the following facts: That an individual known as Irwin Hanft, who resided at 848 North Kings Road, Apt. No. 109, County of Los Angeles, was supervising "Happy" Meltzer's bookmaking operation and that Hanft obtained the weekly figures on Sunday evenings and relayed these figures to "Happy" Meltzer on Sunday evenings. Informant No. 3 had further stated that Antone Kaleel's front telephone number where "Happy" Meltzer's bettors were placing their bets was 770-1668. Informant No. 3 indicated that he had been given the telephone number to call by Irwin Hanft and had personally placed bets over the telephone with the number Irwin Hanft had given him. Informant No. 3 gave Officer McKitterick a portion of the information in December, 1967, and has reaffirmed all of the above information as late as April 15, 1968. The informant indicated that wagers could be placed at the 770-1668 number on sporting events, particularly, baseball games.

On April 19, 1968, Officer McKitterick caused this number to be dialed and heard other officers engage in a telephone conversation relating to wagers to be placed on baseball games. As a result of this telephone call, an individual named Stephen Kahn was arrested for a violation of Section 337a, of the Penal Code. This individual is currently awaiting trial on these charges.

Approximately two hours after the arrest of Stephen Kahn on April 19, 1968, Informant No. 3 contacted Officer McKitterick and told the officer that he had been contacted by Irwin Hanft and told to use telephone number 656-8748 and a code to place his wagers. Officer McKitterick, in company with fellow law enforcement officers, called the telephone number 656-8748 and Officer McKitterick heard his fellow officers place a wager on a baseball game. As a result of the placing of this wager, Blanche Stein was arrested for a violation of Section 337a, Penal Code, and is currently awaiting trial.

Informant No. 3 has previously given information to Officer McKitterick which has resulted in the arrest of three individuals for violations of Section 337a, Penal Code (Bookmaking). Complaints have been filed against all three of these individuals for Bookmaking and they are currently awaiting trial in these matters.

In the early part of January, 1968, affiant, in company with fellow officers, went to the location of 6914 Goodland Avenue, North Hollywood, California. He there observed a white 1964 Chevrolet, sedan, California license No. 00Z 367. A check of the Department of Motor Vehicles showed this vehicle registered to Rudy Antonelli, 7914 Goodland Avenue, North Hollywood. On April 10, 1968,

at approximately 8:30 a.m., affiant observed a 1968 Cadillac, sedan, bronze in color, with a black top, California license No. WPT 814, drive out of the driveway at 7914 Goodland Avenue. The driver of the vehicle was recognized by your affiant, from police photographs, as Rudy Antonelli. Antonelli was followed by affiant and fellow officers to a restaurant parking lot, located in the vicinity of 6th Street and Vermont, in the City of Los Angeles. Immediately after parking his car, Antonelli alighted and got into another vehicle, a 1965 Rambler station wagon, California license No. RHD 070. A check with the Department of Motor Vehicles showed the vehicle to be registered to a Milton Sapperstein, who resided at 16107 South Van Ness Avenue, Gardena, California. The driver of the station wagon was a male Caucasian, 5'8" tall, approximately 160 pounds, approximately 47 years of age, and brown hair. A check with the Department of Motor Vehicles, License Information, in Sacramento, showed a license issued to Milton Sapperstein, who fit this description. The address listed on Milton Sapperstein's driver's license application was 16107 South Van Ness Avenue, Gardena, California.

Affiant observed both the subjects to drive in the aforedescribed Rambler to 535 South Alexandria where Antonelli got out and entered that location. The driver drove to a parking place nearby and then went back, by foot, to 535 South Alexandria and entered that building.

Antonelli and Sapperstein were seen to leave the address at 535 Alexandria approximately three hours later. Sapperstein drove Antonelli back to the vehicle Antonelli had previously been driving and Sapperstein returned to

535 South Alexandria where he stayed until 8:30 p.m. At that time, he left and drove to 16107 South Van Ness Avenue.

The next day, affiant observed both Antonelli and Sapperstein enter Apt. 320 at 535 South Alexandria. Affiant was standing in the hallway, when he observed them enter said apartment.

Affiant checked the registry at 535 South Alexandria and noted the name "Wellman–320" on the registry. A check through Los Angeles Police Department facilities showed a non-published telephone number, 380-9039, listed to Fred Wellman, Apt. 320, 535 South Alexandria, Los Angeles. During the process of observations, lasting over a period of approximately five weeks from the day of the first observation, affiant and his fellow officers have never observed any other individuals except Sapperstein and Antonelli enter and/or leave that apartment.

Subsequent to the first observation at the location of 535 South Alexandria, affiant and/or his fellow officer, each day thereafter, whenever a Major League baseball game was scheduled, placed 535 South Alexandria under observation and the following pattern was observed to be carried out by Antonelli and Sapperstein: On a day when a Major League baseball game was scheduled, Sapperstein would arrive at that location approximately two hours before the scheduled game time. In affiant's experience, this early arrival is in keeping with hours kept by back office clerks. The time would be spent by a back office clerk giving vital information to front clerks, i.e., starting pitchers, betting line, etc. A front clerk is an individual who accepts wagers from bettors and temporarily records them, and

then relays them for permanent recordation to the back office. Sapperstein would stay at this address and would occasionally leave only if there was a few hours between games. He would always return before the scheduled game time. He would stay until 6:30 p.m. His leaving time would invariably coincide with the last scheduled game being played in the Continental United States.

This schedule would not apply on Sundays. On Sundays, both Sapperstein and Antonelli would arrive at 535 South Alexandria in the morning hours. Both individuals would not leave the apartment until two or three hours after the end of the last baseball game played in the Continental United States. It is affiant's opinion that persons engaged in bookmaking activities would have to have the results of the last games played prior to being able to total all of their activity for the week. The additional time spent after the last game was over would give them the opportunity to do so. Thereafter, Sapperstein would drive Antonelli to where Antonelli's car would be parked and Antonelli would then drive to 1155 North La Cienega Boulevard, Los Angeles, and would be observed by this affiant and/or his fellow officers to park his vehicle on the third level parking lot of this apartment complex and then go to Apt. 202. Affiant knows this apartment to be occupied by Antone Kaleel. Affiant has observed Antone Kaleel to enter and leave this apartment on many occasions. Also, Officer McKittrick has told affiant that Antone Kaleel personally has informed Officer McKittrick that he lives at the location of 1155 North La Cienega, County of Los Angeles, Apt. 202.

Antonelli would stay approximately one hour at this

address. He would then leave and drive to a location where he would again meet Sapperstein. On two occasions Antonelli was observed to pass papers to Sapperstein. On May 15, 1968, surveillance of 535 South Alexandria disclosed that neither Antonelli nor Sapperstein arrived at this location. This was unusual in that baseball games were scheduled and whenever baseball games were scheduled, one of them would invariably be at 535 South Alexandria.

On May 16, 17, and 18, 1968, affiant observed the location of 16107 South Van Ness, in the County of Los Angeles, in an effort to follow Sapperstein to whatever address he was going to. Affiant was not successful until May 18, 1968. At that time, Sapperstein was observed to leave that location at approximately 7:30 a.m. in his Rambler station wagon, California license No. RHD 070, and go to the location of 529 Glenwood Road, Glendale, County of Los Angeles. He parked his vehicle and was observed to go into the apartment complex located at 529 Glenwood Road, Glendale. On subsequent occasions, your affiant determined that Sapperstein was entering Apt. 4, located at 529 Glenwood Road, Glendale. He was observed to leave this location at 8:30 p.m. Thereafter, subsequent surveillance established the fact that Sapperstein and Antonelli repeated the pattern that they had established at the location of 535 South Alexandria, including the Sunday procedure.

The change of location from 535 South Alexandria to 529 Glenwood Road (but not the pattern) is not foreign to the operation of a back office in a bookmaking operation. In affiant's experience in dealing with bookmakers, he has observed that security is a prime concern of theirs and

location changes occur frequently and are, in fact, considered necessary elements of security by bookmakers.

Affiant has been informed by a fellow law enforcement officer, Sgt. Zachary, Los Angeles Police Department, Administrative Vice Detail, that a reliable informant was told by "Happy" Meltzer, who was referring to the two arrests which had taken place on April 19, 1968, previously referred to in this affidavit, "Why is it that only my places get taken?" Sgt. Zachary has informed this affiant that this informant (hereinafter referred to as Informant No. 4) has previously given him information resulting in the arrest and conviction of several individuals for violations of Section 337a, Penal Code (Bookmaking). Sgt. Zachary indicated that Informant No. 4 had never given him information which had not been true.

On May 12, 1968, at approximately 6:00 p.m., affiant, along with fellow officers, had an apartment building, located at 848 North Kings Road, County of Los Angeles, under surveillance. A check of the registry at that location indicated that Irwin Hanft occupied Apt. 109 at that location. On subsequent occasions, this affiant observed Irwin Hanft enter Apt. 109. On May 12, 1968, at 6:30 p.m., Hanft was observed to leave this location and drive away in a black Mustang, California license No. RFG 398, and go to a parking lot located at 8969 Santa Monica Boulevard, in the County of Los Angeles. Hanft got out of the vehicle and entered a public telephone booth. As soon as Hanft arrived at the telephone booth, the telephone in one of the booths rang. (It was later determined, by an examination of the telephone booth, that the telephone number was 273-9110.) Hanft immediately answered the telephone and

was observed to write on a piece of paper as he talked. The conversation lasted approximately ten minutes. Hanft then hung up and immediately thereafter was observed to dial the phone, hold a brief conversation, and then leave the telephone booth. Your affiant attempted to follow Hanft, but lost him in heavy traffic.

On May 19, 1968, at approximately 7:00 p.m., affiant went to 8982 Keith Street, West Hollywood, in the County of Los Angeles, and obtained permission from the property owner to use the rear of the property as a surveillance point in an attempt to more closely observe the telephone booth. This position afforded affiant a complete point of vantage from which he could not only visually see any written transactions within the phone booth, but could also overhear any conversations from within the booth.

On May 19, 1968, at 8:15 p.m., your affiant received a radio message from Officer McKitterick that Hanft was leaving his apartment and driving the black Mustang towards the market at 8969 Santa Monica Boulevard, in the County of Los Angeles. At 8:25 p.m., affiant observed Hanft drive into the vacant parking lot and park his vehicle near the aforedescribed phone booths. The phone booth which had the telephone number 273-9110 rang and Hanft immediately answered it. The following conversation and written transactions were heard and observed:

Hanft said, "Hello Bill, I've been here 15 minutes. No I haven't, just kidding. Let's have it."

Hanft was then observed to write seven numbers down on one side of a white piece of paper, approximately 2" x 4". Alongside of these numbers were written other numbers. In your affiant's opinion, column one were numeric codes of

bettors' identification. Column two were total monies to be collected from or paid to bettors. One such line was 311 8329. In affiant's experience in dealing with bookmakers, 311, in his opinion, would be the bettor's coded identification; 8329 is $8,329, an amount of money to be collected from or paid to the bettor.

Hanft was overheard to say, "How much did 301 bet?" There was a pause and then Hanft said, "Seventeen hundred dollars. All that today? Listen Bill, I have to see you about this 301 and 311. How about tomorrow? I'll call you at 10:00." Hanft then terminated the conversation. Hanft immediately dialed telephone number 653-4574. This number has been checked by affiant with departmental facilities and it came back registered to Delores Fried, located at 6431 West 6th Street, in the City and County of Los Angeles. Delores Fried has been seen on several occasions with Harold "Happy" Meltzer. Harold "Happy" Meltzer has been seen on numerous occasions going into and coming out of the location of 6431 West 6th Street, in the City and County of Los Angeles, both with Delores Fried and Irwin Hanft.

Hanft was heard to say, "Hap, I got the stuff. Ready?" Hanft then read off the white piece of paper the codes and totals he had previously written down. He then terminated the conversation and was followed to the location at 848 North Kings Road, in the County of Los Angeles.

In affiant's opinion, Hanft had received totals of monies to be collected from or paid to bettors from an individual Hanft referred to as "Bill" and relayed these totals to a person he referred to as "Hap". In affiant's opinion, the "Bill" referred to by Hanft is Rudy Antonelli. "Hap"

referred to by Hanft is Harold "Happy" Meltzer.

On the dates of 3/25/68 and 5/15/68, affiant observed Irwin Hanft go to the residence of "Happy" Meltzer at 6431 West 6th Street, in the City and County of Los Angeles.

A check with the United States Department of Justice, Federal Bureau of Investigation records indicates that Antone Kaleel has been arrested several times for violations of Section 337a, Penal Code, and has been convicted at least once for this charge.

A check of the records of the Bureau of Criminal Identification and Investigation of the State of California, Department of Justice, indicates that Rudy Antonelli has been arrested at least three times for bookmaking activities.

A check of the records of the Bureau of Criminal Identification and Investigation of the State of California, Department of Justice, reveals that Irwin Hanft has been convicted once for Gambling, in violation of Section 43.01, Municipal Code of the City of Los Angeles.

A check of the records of the Bureau of Criminal Identification and Investigation of the State of California, Department of Justice, reveals that Harold Meltzer has been convicted of a violation of the Federal Drug Act, violation of the Federal Customs Laws, and Conspiracy to Import Narcotics, in violation of the United States Customs Act.

After having evaluated the aforedescribed facts which were supported by observations and associations of the subjects mentioned, your affiant believes that Antone Kaleel is the boss of a bookmaking organization and that Rudy Antonelli acts as a lieutenant, in that he supervises the back office activities and on Sunday evenings of each week carries records from the back office to the boss, Antone Kaleel.

He further believes that Milton Sapperstein is a back office clerk and records wagers on permanent records at the back office; that "Happy" Meltzer is a bookmaker and uses the facilities of Antone Kaleel's organization to keep records of Meltzer's bettors; that Irwin Hanft acts as Meltzer's lieutenant in that he receives records of monies to be paid to or collected from bettors each Sunday night from Rudy Antonelli and then causes these records to be relayed to "Happy" Meltzer each Sunday evening.

Your affiant, during the past 16 years, states that he has been employed as a member of the Los Angeles Police Department and, particularly, during the four years that he has been assigned full time to the Vice and Bookmaking Detail thereof, has made approximately 100 arrests of persons for bookmaking, said arrestees having been prosecuted for violations of the bookmaking statutes of the State of California, both in the Municipal and Superior Courts of Los Angeles County. Your affiant has qualified and testified as an expert in the manner and means, symbols, signs, letters, and conduct of bookmaking in Los Angeles County approximately 75 times in both the Municipal and Superior Courts of Los Angeles County, State of California. He has also qualified as an expert in this field in the United States District Courts in Los Angeles, California, and before the United States Federal Grand Jury in Los Angeles, California.

Your affiant, based on his past experience and also the fear expressed by the informants involved in this investigation, desires to keep the identity of said confidential informants secret and confidential because your affiant believes that the disclosure of said informants' identities would endanger their safety and well-being, subjecting them

to physical harm and danger.

Your affiant further believes that disclosure of said confidential informants' identities would destroy and tend to impair their further usefulness to law enforcement officers engaged in investigating and uncovering illegal criminal activities.

Your affiant states that the said informants did not speak with personal knowledge when imparting the information heretofore set forth, unless and except where specifically stated to be otherwise.

It is hereby requested that warrants be issued that can be served at any time of the day or night. It is necessary to serve these warrants at night because the sporting events taking place (baseball games) are played at night and this would be the time when the gambling activities aforedescribed would be taking place.

Your affiant commenced the actual physical mechanics of preparing this affidavit and attached search warrant at 11:45 a.m. of May 22, 1968; and your affiant affixed his signature under oath to this affidavit before the undersigned magistrate at the time and date attested by said magistrate; the elapsed time reflected herein has been diligently utilized by your affiant in the mechanics of physically preparing these documents, locating and consulting with Deputy District Attorney Alan M. Genelin of this County, in reference to the aforementioned preparation; locating the appropriate magistrate; and transporting these documents to the magistrate for his official action in connection therewith.

Your affiant has reasonable cause to believe that grounds for the issuance of a search warrant exist, as set forth in Section 1524 of the Penal Code, based upon the

aforementioned information, facts and circumstances.

Your affiant prays that a search warrant be issued, based upon the above facts, for the seizure of said property, or any part thereof, at any time of the day or night, good cause being shown therefor, and that the same be brought before this magistrate or retained subject to the order of this court, or of any other court in which the offense in respect to which the property or things taken is triable, pursuant to Section 1536 of the Penal Code.

D. A. Danko
(Affiant)

Subscribed and sworn to before me
on this 25th day of May, 1968,
at 1:00 p.m.

Paul Roest
Judge of the Municipal Court

STATE OF CALIFORNIA)
) ss.
County of Orange)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Orange, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 322 Main Street, Huntington Beach, California 92648, that on OCTOBER 11th, 1971, I served the within PETITION FOR WRIT OF CERTIORARI (Kaleel v. The People of the State of Calif.) on the following named parties by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Huntington Beach, California, addressed to said parties at the addresses as follows:

Clerk, Los Angeles County Superior Court
111 North Hill Street
Los Angeles, California 90012
For: Hon. Norman R. Dowds, Judge

Attorney General, State of California
600 State Building
Los Angeles, California 90012 [2 copies forwarded]

District Attorney, County of Los Angeles
600 Hall of Justice
Los Angeles, California 90012

Solicitor General of the United States
Washington, D. C. 20543 [3 copies forwarded]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on OCTOBER 11th, 1971, at HUNTINGTON BEACH, CALIFORNIA.

D. A. Standefer